# **EXHIBIT O**

From: MacKinnon, Ari
To: Forman, Jonathan A.

Cc: Calvani, Torello; Peace, Breon S.; Xu, Donna; Molina, Marco; Wasick, Joanna F.

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

**Date:** Thursday, February 08, 2018 7:30:57 PM

## Dear Jonathan,

We have conferred with our clients and they are not amenable to the current proposal from the Trustee, set forth in your email below. The proposal, as it stands, remains extremely broad and burdensome. In particular, the proposal still necessitates significant coordination with four separate foreign BNPP Defendants and, as you are aware, requests that each BNPP Defendant produce all documents concerning, among other things, BLMIS and any BLMIS feeder fund, over a period of time that spans more than two decades and reaches back thirty years. Given the breadth of discovery requested and the threshold issues that still need to be addressed, we continue to believe that discovery is premature at this stage and that we should refrain from engaging in discovery until the Court decides our clients' motion to dismiss.

Accordingly, we are prepared to move forward with a motion for a stay of discovery under the following briefing schedule, which slightly modifies the proposed schedule outlined in my email of February 1, 2018:

- February 12, 2018 BNPP Defendants file their motion to stay discovery.
- February 26, 2018 Trustee files his opposition.
- March 5, 2018 BNPP Defendants file their reply brief.

As we have previously noted, the schedule you proposed in your email of January 31, 2018 does not comport with the Federal Rules of Civil Procedure. Under the Federal Rules, even were the Trustee correct that the Court deemed the proposed discovery requests served as of January 23, 2018 (a position with which we disagree), any proposed motion-to-compel would not be ripe until after the deadline for the BNPP Defendants' response to the discovery requests, which would be February 23, 2018 at the earliest. We do not agree that the Trustee can insist that the BNPP Defendants abide by timeframes set out in the Federal Rules, including with respect to those related to initial disclosures, the filing of a proposed discovery plan, and responses and objections to the Trustee's discovery requests, and at the same time seek to make filings not in compliance with such rules or applicable law.

Under the circumstances, the proper means to get this matter before the Court in an expeditious manner is for the BNPP Defendants to file a motion for a stay of discovery. And, pending the Court's decision on such motion, any discovery-related obligations under the Federal Rules will be stayed.

Please let us know if you agree with our proposed briefing schedule. We would also be happy to discuss these issues with you in greater detail, in an effort to come to an agreement on a reasonable course of action.

Best,

Ari

#### Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

From: Forman, Jonathan A. [mailto:jforman@bakerlaw.com]

**Sent:** Friday, February 2, 2018 10:25 AM

**To:** MacKinnon, Ari <amackinnon@cgsh.com>

Cc: Calvani, Torello <tcalvani@bakerlaw.com>; Peace, Breon S. <bpeace@cgsh.com>; Xu, Donna

<dnxu@cgsh.com>; Molina, Marco <mmolina@bakerlaw.com>; Wasick, Joanna F.

<jwasick@bakerlaw.com>; Forman, Jonathan A. <jforman@bakerlaw.com>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Ari,

Thank you for your email. Because there will be no need for a briefing schedule if your clients agree to the Trustee's proposal to engage in limited domestic document discovery pending the Court's decision on the motion to dismiss, it seems premature at this point to discuss a briefing schedule until we hear back from your clients on the Trustee's proposal.

Sincerely, Jonathan

#### Jonathan A. Forman



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.847.2855

jforman@bakerlaw.com bakerlaw.com

From: MacKinnon, Ari [mailto:amackinnon@cgsh.com]

Sent: Thursday, February 01, 2018 6:21 PM

**To:** Forman, Jonathan A. <<u>iforman@bakerlaw.com</u>>

**Cc:** Calvani, Torello < <a href="mailto:tcalvani@bakerlaw.com">tcalvani@bakerlaw.com</a>>; Peace, Breon S. < <a href="mailto:bpeace@cgsh.com">bpeace@cgsh.com</a>>; Xu, Donna < <a href="mailto:dnxu@cgsh.com">dnxu@cgsh.com</a>>; Wasick, Joanna F. < <a href="mailto:wasick@bakerlaw.com">wasick@bakerlaw.com</a>>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Hello Jonathan,

Thank you for your email. Although we continue to believe that discovery is premature at this stage and that we should refrain from engaging in discovery until the Court decides our clients' motion to dismiss, we will take the Trustee's revised discovery proposal under advisement and will discuss it with our clients. Given that we must confer with four separate entities, each of which is domiciled abroad, and that even the revised proposal is extremely broad, we cannot commit to get back to you tomorrow. Nonetheless, we will make every effort to respond promptly and reasonably under the circumstances.

As I previewed in my email on Tuesday requesting a call, the schedule that the parties tentatively discussed is incoherent. Your revised proposed schedule (which would eliminate reply briefing) does not address that incoherence. In particular, your schedule would have the Trustee file a motion to compel on February 9, long before the BNPP Defendants' deadline to respond to the relevant document requests has elapsed. Indeed, even assuming you were correct that the Court deemed the proposed discovery requests served as of January 23, 2018 (a position with which we disagree), the BNPP Defendants would have until February 22, 2018 to respond to those requests and any motion to compel filed before that date would be unripe. Your contention that you are entitled to file a motion to compel because we have represented that we will not produce documents finds no support in the law or the facts, and is especially misplaced given that you have just sent us a revised discovery proposal that we have agreed to present to our clients.

Nonetheless, in a good faith effort to resolve these issues, we would be willing to follow a substantially similar schedule as the one outlined below, provided that (i) the BNPP Defendants would move for a stay, rather than the Trustee moving to compel, and (ii) the Trustee agrees that the time to respond to all applicable discovery obligations – including without limitation those related to the submission of a discovery plan to the Court, initial disclosures, and objections and responses to the discovery requests – will be held in abeyance until the Court renders a decision on the motion. In this respect, we do not believe the Court's comments regarding the Trustee's filing of a motion to compel preclude our filing of a motion for a stay; in fact, we understand the Court was merely identifying one possible path forward, a path that the Trustee could follow only if he complies with the timing rules of the Federal Rules of Civil Procedure discussed above. We therefore propose the following schedule:

- February 9, 2018 BNPP Defendants file their motion to stay discovery.
- February 23, 2018 Trustee files his opposition.
- March 5, 2018 BNPP Defendants file their reply brief.

We would be pleased to discuss these issues with you in greater detail, in an effort to come to a

reasonable resolution.

#### Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

**From:** Forman, Jonathan A. [mailto:jforman@bakerlaw.com]

**Sent:** Wednesday, January 31, 2018 12:45 PM **To:** MacKinnon, Ari <a href="mackinnon@cgsh.com">amackinnon@cgsh.com</a>

**Cc:** Calvani, Torello < tcalvani@bakerlaw.com >; Peace, Breon S. < bpeace@cgsh.com >; Xu, Donna

<<u>dnxu@cgsh.com</u>>; Molina, Marco <<u>mmolina@bakerlaw.com</u>>; Wasick, Joanna F.

<<u>jwasick@bakerlaw.com</u>>; Forman, Jonathan A. <<u>jforman@bakerlaw.com</u>>

**Subject:** RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Ari,

Thank you for hosting yesterday's meeting. As discussed, to avoid any unnecessary motion practice, the Trustee proposes that the parties engage in limited domestic document discovery pending the Court's decision on the motion to dismiss. The Trustee's proposal is as follows:

If Defendants agree to (i) produce documents that are located in, or accessible from, the United States that are responsive to the Trustee's general requests (e.g., BNP Paribas S.A. Requests 1-13 made applicable to all Defendants), organizational requests (e.g., BNP Paribas S.A. Requests 14-24 made applicable to all Defendants), certain due diligence process requests (e.g., BNP Paribas S.A. Requests 25, 29, 52, 64 made applicable to all Defendants), and the third party litigation and investigation request (e.g., BNP Paribas S.A. Request 84 made applicable to all Defendants) and (ii) identify whether the employees listed on Exhibit E to the Trustee's October 27, 2017 letter are either employed by Defendants or represented by Cleary, then the Trustee will agree during the pendency of the Court's decision on the motion to dismiss to (a) hold in abeyance demanding a response to the balance of the requests, negotiating a proposed discovery plan, and exchanging initial disclosures, and (b) not pursue depositions or written discovery.

We understand that you anticipate letting us know by this Friday whether your clients will agree to this proposal. If your clients reject it, the briefing schedule we discussed (set forth below) would make sense. There would be no need for the Trustee to wait any longer to move to compel because you have represented repeatedly (including during yesterday's Rule 26(f) conference) that your clients will not produce any documents as they believe that discovery is premature and the Trustee's requests are overbroad and unduly burdensome. Indeed, the Court directed us to so move if we

were unable to resolve this dispute through our Rule 26(f) conference.

- Trustee moves to compel on or by February 9, 2018;
- Defendants respond to Trustee's motion to compel [and cross-move for a discovery stay, if they so choose] on or by February 23, 2018; and
- [If Defendants cross-move for a discovery stay, Trustee responds on or by March 5, 2018].

Given the nature of this dispute, we think that burdening the Court with reply briefs is unnecessary. We look forward to your response to our good faith efforts to resolve this dispute.

Sincerely, Jonathan

#### Jonathan A. Forman



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.847.2855

jforman@bakerlaw.com bakerlaw.com

**From:** MacKinnon, Ari [mailto:amackinnon@cgsh.com]

**Sent:** Tuesday, January 30, 2018 2:45 PM

**To:** Forman, Jonathan A. <<u>iforman@bakerlaw.com</u>>

**Cc:** Calvani, Torello <<u>tcalvani@bakerlaw.com</u>>; Peace, Breon S. <<u>bpeace@cgsh.com</u>>; Xu, Donna

<<u>dnxu@cgsh.com</u>>; Molina, Marco <<u>mmolina@bakerlaw.com</u>>; Wasick, Joanna F.

<<u>iwasick@bakerlaw.com</u>>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Hello Jonathan,

It was a pleasure to see you and your colleagues at our offices earlier today in order to discuss discovery issues. Upon further reflection which was sparked by your indication at the end of our meeting that you believe your document requests were served on January 23 and that our responses thereto are due within 30 days of that date, we think that the briefing schedule and process we discussed is not coherent. It contemplates a motion to compel our response to your document requests on February 9, two weeks before you claim our responses are due, which is not in accordance with the Federal Rules of Civil Procedure.

Would you have a minute to discuss this issue this afternoon? I think we can figure out a process that makes sense.

Thanks very much.

#### Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

From: Forman, Jonathan A. [mailto:jforman@bakerlaw.com]

**Sent:** Monday, January 29, 2018 12:31 PM **To:** MacKinnon, Ari <a href="mailto:amackinnon@cgsh.com">amackinnon@cgsh.com</a>>

**Cc:** Calvani, Torello <<u>tcalvani@bakerlaw.com</u>>; Peace, Breon S. <<u>bpeace@cgsh.com</u>>; Xu, Donna

<<u>dnxu@cgsh.com</u>>; Forman, Jonathan A. <<u>iforman@bakerlaw.com</u>>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Thank you, Ari. That time works for us. Best, Jonathan.

**From:** MacKinnon, Ari [mailto:amackinnon@cgsh.com]

**Sent:** Sunday, January 28, 2018 2:34 PM

To: Forman, Jonathan A. < iforman@bakerlaw.com>

**Cc:** Calvani, Torello <<u>tcalvani@bakerlaw.com</u>>; Peace, Breon S. <<u>bpeace@cgsh.com</u>>; Xu, Donna

<dnxu@cgsh.com>

**Subject:** Re: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Hello Jonathan,

We appreciate your response. We continue to believe that discovery would be premature at this time, particularly in light of the Court's questions as to whether the Amended Complaint on which the Trustee is seeking discovery was properly filed. While we disagree with the position set forth in your email, we would be pleased to host you at our offices on Tuesday at 12pm in order to engage in good-faith discussions regarding the discovery process and related scheduling issues.

If this time-slot works for you, we will follow up with a calendar invitation, including the relevant logistical information. Thanks, and have a nice weekend.

\_\_\_\_\_

Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: <u>asoto@cgsh.com</u>

One Liberty Plaza, New York NY 10006 t: +1 212 225 2243 | f: +1 212 225 3999

www.clearvgottlieb.com | amackinnon@cgsh.com

From: Forman, Jonathan A. [mailto:jforman@bakerlaw.com]

**Sent**: Thursday, January 25, 2018 05:56 PM

**To**: MacKinnon, Ari

**Cc**: Calvani, Torello < <a href="mailto:tcalvani@bakerlaw.com">tcalvani@bakerlaw.com</a>>; Peace, Breon S.; Xu, Donna; Forman, Jonathan A.

< iforman@bakerlaw.com>

**Subject**: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Ari,

Thank you for your email. We prefer to meet with you in person on Tuesday at 12pm. We can host or come to your office, whichever you prefer. We disagree with your interpretation of Judge Bernstein's direction during Tuesday's informal conference and your view of your clients' discovery obligations. It is clear that Judge Bernstein deemed the Trustee's Rule 34 requests served as of the conference and directed the parties to hold a Rule 26(f) conference. We will follow the Court's direction in a good faith attempt to come to an agreement on discovery and case administration.

We look forward to meeting and conferring with you on Tuesday.

My best, Jonathan

#### Jonathan A. Forman



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.847.2855

jforman@bakerlaw.com bakerlaw.com

**From:** MacKinnon, Ari [mailto:amackinnon@cgsh.com]

Sent: Wednesday, January 24, 2018 8:28 PM

To: Forman, Jonathan A. <<u>iforman@bakerlaw.com</u>>; Xu, Donna <<u>dnxu@cgsh.com</u>>
Cc: Calvani, Torello <<u>tcalvani@bakerlaw.com</u>>; Peace, Breon S. <<u>bpeace@cgsh.com</u>>
Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Hello Jonathan,

It was a pleasure to meet you and your team in person as well. We would be pleased to confer with you regarding the best means of putting before the Court the issue of whether discovery should commence now, during the pendency of our motion to dismiss. We wish to clarify, however, that we would not view such a conference as triggering any other discovery obligations under the Rules. Our position remains that discovery should not commence in this action until our motion to dismiss has been decided by the Court. Moreover, we do not interpret the Court's direction that we meet as an order to participate in the very discovery processes which the Court appeared skeptical should

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take place now, especially in light of the fact that the Amended Complaint was not properly filed.

We would be available on Tuesday afternoon from 12 - 2pm or Wednesday afternoon from 2 - 3pm or 5 - 6pm to discuss in further detail over the phone.

Thank you.

#### Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

From: Forman, Jonathan A. [mailto:jforman@bakerlaw.com]

**Sent:** Tuesday, January 23, 2018 1:59 PM

**To:** MacKinnon, Ari <a href="mackinnon@cgsh.com">a <a href="mackinnon@cgsh.com">a <a href="mackinnon@cgsh.com">dnxu@cgsh.com</a>>

**Cc:** Calvani, Torello <<u>tcalvani@bakerlaw.com</u>>; Forman, Jonathan A. <<u>iforman@bakerlaw.com</u>>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

Ari & Donna,

It was a pleasure to finally meet you and your team in person. We're generally available this Friday and next Monday, Tuesday, and Wednesday to have our Rule 26(f) conference. We'd be happy to host at our office or come to you. Please let us know what your availability is those days and where you'd like to meet.

My best, Jonathan

# Jonathan A. Forman



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.847.2855

jforman@bakerlaw.com bakerlaw.com

From: MacKinnon, Ari [mailto:amackinnon@cgsh.com]

**Sent:** Tuesday, November 28, 2017 4:31 PM **To:** Wasick, Joanna F. <<u>iwasick@bakerlaw.com</u>>

**Cc:** Calvani, Torello < tcalvani@bakerlaw.com >; Molina, Marco < mmolina@bakerlaw.com >; Kornfeld, Mark A. < mkornfeld@bakerlaw.com >; Forman, Jonathan A. < jforman@bakerlaw.com >; Xu, Donna < dnxu@cgsh.com >; Peace, Breon S. < bpeace@cgsh.com >; Janet, Andrew < ajanet@cgsh.com >

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

#### Dear Counsel:

Attached please find a .pdf copy of the letter sent out today by First Class mail.

Thanks,

Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

From: Wasick, Joanna F. [mailto:jwasick@bakerlaw.com]

**Sent:** Thursday, November 16, 2017 12:33 PM **To:** MacKinnon, Ari <a href="mackinnon@cgsh.com">amackinnon@cgsh.com</a>

**Cc:** Calvani, Torello < <a href="mailto:tcalvani@bakerlaw.com">tcalvani@bakerlaw.com</a>; Molina, Marco < <a href="mailto:mmolina@bakerlaw.com">mmolina@bakerlaw.com</a>; Kornfeld, Mark A. < <a href="mailto:mkornfeld@bakerlaw.com">mkornfeld@bakerlaw.com</a>; Forman, Jonathan A. < <a href="mailto:jforman@bakerlaw.com">jforman@bakerlaw.com</a>; Xu, Donna < <a href="mailto:dnxu@cgsh.com">dnxu@cgsh.com</a>; Peace, Breon S. < <a href="mailto:bpeace@cgsh.com">bpeace@cgsh.com</a>; Janet, Andrew < <a href="mailto:ajanet@cgsh.com">ajanet@cgsh.com</a>>

Subject: RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

#### Dear Counsel:

Attached please find our response to your November 13 letter. A hard copy will follow.

Sincerely, Joanna

### Joanna Wasick

Associate



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.589.4635

jwasick@bakerlaw.com bakerlaw.com

From: MacKinnon, Ari [mailto:amackinnon@cgsh.com]

**Sent:** Monday, November 13, 2017 5:23 PM **To:** Wasick, Joanna F. < <u>iwasick@bakerlaw.com</u>>

**Cc:** Calvani, Torello < <a href="mailto:tcalvani@bakerlaw.com">tcalvani@bakerlaw.com</a>; Molina, Marco < <a href="mailto:mmolina@bakerlaw.com">mmolina@bakerlaw.com</a>; Kornfeld, Mark A. < <a href="mailto:mkornfeld@bakerlaw.com">mmolina@bakerlaw.com</a>; Kornfeld, Mark A. < <a href="mailto:mkornfeld@bakerlaw.com">mkornfeld@bakerlaw.com</a>; Forman, Jonathan A. < <a href="mailto:jforman@bakerlaw.com">jforman@bakerlaw.com</a>; Xu, Donna < <a href="mailto:dnxu@cgsh.com">dnxu@cgsh.com</a>; Peace, Breon S. < <a href="mailto:bpeace@cgsh.com">bpeace@cgsh.com</a>; Janet, Andrew < <a href="mailto:ajanet@cgsh.com">ajanet@cgsh.com</a>>

**Subject:** RE: Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

#### Dear Counsel:

Attached please find a pdf copy of the letter sent out today by First Class mail.

#### Thanks,

#### Ari MacKinnon

Cleary Gottlieb Steen & Hamilton LLP

Assistant: asoto@cgsh.com

One Liberty Plaza, New York NY 10006 T: +1 212 225 2243 | F: +1 212 225 3999 amackinnon@cgsh.com | clearygottlieb.com

From: Wasick, Joanna F. [mailto:jwasick@bakerlaw.com]

**Sent:** Friday, October 27, 2017 3:33 PM

**To:** Xu, Donna <<u>dnxu@cgsh.com</u>>; Peace, Breon S. <<u>bpeace@cgsh.com</u>>; MacKinnon, Ari <<u>amackinnon@cgsh.com</u>>

**Cc:** Calvani, Torello < tcalvani@bakerlaw.com >; Molina, Marco < mmolina@bakerlaw.com >; Kornfeld, Mark A. < mkornfeld@bakerlaw.com >; Forman, Jonathan A. < iforman@bakerlaw.com >

**Subject:** Irving H. Picard, Trustee v. BNP Paribas S.A. et al. (Adv. Pro. No. 12-01576)

# All:

Attached please find pdf copies of the letter and attachments that were sent out earlier today by First Class mail.

Best regards, Joanna

#### Joanna Wasick

Associate



45 Rockefeller Plaza New York, NY 10111-0100 T +1.212.589.4635

jwasick@bakerlaw.com bakerlaw.com





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